IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5120 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESH MANEKLAL THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioner

MR VB GARANIYA LD AGP for Respondent

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 25/01/2000

ORAL JUDGEMENT

This appeal is directed against the judgement and decree dtd. 31st July, 1997, passed by the 2nd Joint Civil Judge (S.D.), Surendranagar in Special Civil Suit NO. 19/92 whereby the suit for compensation of Rs.60,000/has been dismissed with costs.

2. It is the plaintiff's First Appeal. The plaintiff came with a case that he was running a shop in Village Sapar. On 30th September, 1986, he had gone to the market to inquire as to whether kerosene was available or not. At that time, he sustained injury on his right thigh and on that account he had to remain as an indoor patient, after taking first aid in Chotila hospital. He was, then taken to Civil Hospital, Rajkot for operation and there he remained for 2 to 2.1/2 months and thereafter also treatment continued for a period of one year. Despite this, he is not able to walk normally and could not do his normal business and he has sufferred permanent disability. That the plaintiff also came with a case that he then came to know that there was a dispute between to communities namely Koli and Bharavad and on that account, there was a sudden Police Firing. The Police had opened fire without any reason, the firing was unlawful and on account of such firing, he has sufferred permanent injuries resulting in to permanent disability. It was also the case of the plaintiff that he had spent a sum of Rs.20,000/- for medicine and for going and coming to Rajkot. He also claimed Rs.18,000/against loss of his income because he had to remain as an indoor patient. The plaintiff says that he was married person with three children and the entire responsibility was upon him. Because of the injury, the income was reduced. That he sustained bullet injury at the hands of Police employee/officer whereas the Police employee/officer had no right or justification to fire. The police had opened the firing without any reason and therefore, the State of Gujarat was liable to pay compensation to the plaintiff. Further a Sessions Case No. 84/88 was tried against 27 Bharavads for the offence punishable under Sec. 307 of the I.P.C. including Sections 332, 147, and 148 and the Sessions case was decided on 31st July, 1991 and therefore, according to Article 12 of the Limitation Act, limitation would start from the date of the termination of proceedings in the Criminal case, and therefore, the suit was within limitation. The Limitation should be treated to have commenced from 1/10/91. He has also stated that in the proceedings before the Sessions Court, injured persons were to be compensated but the Sessions Court did not grant compensation to anybody. He claimed compensation of Rs.60,000/- and interest at the rate of 18% p.a.

3. The suit was filed in forma pauperis with Civil Application No.65/91. That application was allowed and thereupon Civil Suit was registered at NO.19/92. In the Civil Suit, on behalf of the State of Gujarat, reply was

filed in which inter-alia it was stated that the suit had been filed without any notice under Sec.80 C.P.C., and it was time barred. The allegation that the plaintiff had sustained injury on 30th September, 1986 as a result of firing and other pleadings with regard to receiving treatment, permanent disability, spending of Rs.20,000/towards medicine etc. were denied. According to the village Sapar to control the dispute between Rabaries and village Sapar to control the dispute between Rabari and Koli. In the Police party, Digvijaysinh Jambha and Nirubhai Kalyansinh were on duty on 30/9/1986 as Constables. About 100 to 150 Rabaries were moving in the village with arms while Police constables were briefing the Rabaries, the Rabaries attacked the Police Constables and even tried to snatch the rifle from the police constables. The police constables, then made first firing in the air, the mob did not retreat, therefore, police constables after giving warning had to open the firing in their self-defence, in which two persons were injured and police Constable Digvijaysinh also sustained injuries. Since the mob was out of control and no officer was present on spot, there was no time to seek permission of the higher officer, as the life of the constables on duty, was in peril. It was a case of firing in their own defence. On the basis of these pleadings, it was submitted that the suit was liable to be dismissed.

4. On the basis of the pleadings, following issues were framed.

1. Whether the plaintiff proves that the police had without any reason fired on the plaintiff and therefore, the plaintiff had received serious injuries which resulted into permanent disability?

2. Whether the plaintiff proves that there was no fault on the part of the plaintiff during fire ?

3. Whether the plaintiff proves that wrongful act of the police who was of the defendant ?

4. Whether the suit is in time ?

5. Whether the plaintiff is entitled to the amount of Rs.60,000/- or any one from the defendant ?

6. What order and decree ?

The above first three issues were decided against the plaintiff on merits and 5th issue was also decided against the plaintiff. On the question of 4th issue about limitation also, the Court held that the suit is time barred and accordingly the judgement and decree was passed dismissing the suit.

5. I do not find it necessary to go into the merits, so far as Issue Nos. 1, 2, 3 and 5 are concerned, for the simple reason that this appeal can be decided on the question of limitation itself. I also find that although a plea was taken in the written statement on behalf of the State of Gujarat that the suit had been filed without notice under Sec.80 C.P.C.- no issue was strucked on this aspect.

6. It is not the case of the plaintiff that any notice under Sec.80 C.P.C. was given to the State of Gujarat before filing of the suit. Giving of the notice u/S. 80 C.P.C. before filing the suit against Government, is pre-requisite and condition precedent and provision of Sec.80 are mandatory and without the notice, no suit can be instituted against the Government, until the expiry of two months next after the notice in writing has been delivered. In the instant case, it is therefore, very clear that the suit was filed without any notice u/s. 80 C.P.C. and therefore, the suit from its very inception was bad and it deserved to be dismissed on this ground alone. Whether any issue on this aspect was struck or not it is a requirement which goes to the root of the matter and the suit from its very inception is rendered to be incompetent. Provisions of Sec.80 C.P.C. are mandatory and admit of no exception except as provided under Sub-Sec.2 which is not the case here. In the present case, there is no any contingency as provided under Sub-Sec.3 and there is no question of error or defect in the notice inasmuch as notice itself in the facts of this case is wanting. The requirement of Sec.80 C.P.C. before any suit is filed against the Government is the condition which could not be waived and is not capable of being waived. In the facts of the present case, the suit could not be even entertained, in absence of prior notice u/s. 80 C.P.C. Even otherwise, the suit was hopelessly time barred. It goes without saying that according to the plaintiff himself, the injury was sustained by him on 30th September, 1986 whereas the suit was filed in the year 1991, much after the expiry of period of three years. In such circumstances, it cannot

be said that the limitation would start only after the decision of Sessions Court with which the present applicant was not at all concerned. The Sessions Case was with regard to the dispute between two communities. It is the case of the plaintiff himself that he is not a member of either of the communities, he is Thakkar. He is neither Bharvad, Rabari or Koli. He was not at all concerned with the dispute. He says that he had gone to market to inquire about the availability of kerosene and at that time, there was a firing because of dispute between two group of the aforesaid communities. In such circumstances, if the Sessions Case was going against the Bharavads, there was no reason for him to wait for the decision of the Sessions Court which according to him was decided on 31st July, 1991. The plaintiff can hardly seek the benefit of Article 12 of the Limitation Act. The trial Court has dealt with question of limitation in detail giving adequate reasons and has held that the suit was time barred, according to Article 113. Although under Article 21 for personal injury, limitation is one year - in the facts and circumstances of the case, the suit was filed after the expiry of period of three years from 30th September, 1986. Pendency of the proceedings in the Sessions Case has no relevance and the Trial Court has rightly relied upon Article 113 of the Limitation Act and therefore, the suit should have been filed within a period of three years from 30th September, 1986, i.e. before 30th September, 1989, whereas the suit was filed in the year 1991, which was on the face of it hopelessly time barred. This Court does not find that the impugned judgement and decree passed by the 2nd Jt. Civil Judge (S.D.), Surendranagar warrants any interference by this court as it is found that the suit has been rightly dismissed. This appeal has no merit and the same is hereby dismissed. In the facts and circumstances of the case, no order as to costs.

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